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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

SMITH, KIMBERLY S

ART UNIT PAPER NUMBER

3644

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/643,521 | Applicant(s) REISGIES, ROLF W. | |
| | Examiner Kimberly S. Smith | Art Unit 3644 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 02/13/06 have been fully considered but they are not persuasive. With respect to the Applicant's addressing MPEP § 2143.01(v) regarding a "proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." It is pointed out that the detachability of the axles of Ferris is not a proposed modification but an inherent property of the axle structure of Ferris. It is noted that the Applicant has stated in their response that "most would not consider...an axle mechanism, to be detachable because removing them is expensive, takes great effort and is generally only attempted when repair is necessary." The Applicant has not argued the fact that the axle mechanism is an integral structure not capable of detaching, only that one would most not likely attempt to do as such. It is therefore maintained that the axle structure as disclosed by Ferris is a detachable structure.
2. In response to applicant's argument that the Applicant claims each carriage being detachable from the milking parlor frame upon arrival of the frame at a destination, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.
3. With respect to the arguments regarding claims 13 and 14, the Applicant is directed to section 714.02 of the MPEP in which it is stated that "The reply by the applicant or patent owner must be reduced to a writing which distinctly and specifically points out the supposed errors in

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the examiner's action and must reply to every ground of objection and rejection in the prior Office action." It is noted that the rejection of claims 13 and 14 and the rationale supporting the rejection based upon the modification of the Ferris reference has been proffered in the actions dated 06/21/04, 11/23/04 and 05/04/05 and have never been challenged as a supposed error. As the Applicant has not seasonally challenged the rejection of the claims or the rationale there behind, the Applicant has through the prosecution history supported such rationale and therefore the arguments regarding these rejections are not found persuasive. The rejection is maintained.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11-15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferris, US Patent 3,019,763 in view of Smith, US Patent 4,250,836.

Ferris discloses a modular milking parlor comprising a frame base, plurality of upright members, at least one longitudinal support member attached to the upright support members, wheels and a plurality of milking stations (as seen in the figures) including a means for raising and lowering the platform to the ground for lessening the climb of the cows to the unit. Ferris further discloses a plurality of wheeled carriages having a carriage body (i.e. the axle mechanism), which is detachable from the milking parlor frame (as it is well known in the art that axle mechanisms are detachable from frames in order to replace them when damage occurs

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thereto). It is noted that the recitation regarding the carriages being temporarily connected and detachable from the milking parlor frame upon arrival of the frame at a destination, as this is an intended use recitation and there is no structure disclosed in Ferris which would preclude the removal of the wheeled carriages upon arrival of the frame at a destination, the claim limitation is met. While Ferris does not disclose four or more wheeled carriages, it would have been an obvious matter of design choice to use four or more carriages, since the Applicant has not disclosed that four or more carriages solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with any number of carriages so long as the frame is supported appropriately, which is within the knowledge of one in the art to discern the appropriate number). Further, Ferris does not teach the wheels being adjustably mounted so as to raise and lower with respect to the carriage body. Smith teaches within the analogous art of animal related trailers means for adjustably mounting the wheels (via hydraulic operation, column 4, lines 63-66) to raise and lower them with regards to the platform to reduce the climb for the animal to enter the trailer. Because these two structures for lowering and raising a platform to reduce the vertical distance required by the animal to enter the device were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the hydraulic system taught by Smith for the jacking system disclosed by Ferris to reduce the amount of physical labor required by the operator.

Regarding claim 13, Ferris as modified discloses the invention as claimed with the exception of the use of steel T-beams. It would have been an obvious matter of design choice to design the frame base with T-beams since the applicant has not disclosed that the T-beams solves any stated problem or is for any particular purpose and it appears that the invention would

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perform equally well with the use of an I-beam or an L-beam. Further, Ferris as modified does not positively disclose the structure is made from steel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use steel, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 14, Ferris as modified discloses the use of holes in the frame base (60) with the exception of positively disclosing their positioning within the frame. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the holes in upright webs of the T-beams of the base, since it has been held that rearranging parts of an invention involves only routine skill in the art. As such, the frame may be connected to the wheeled carriage by the holes if so desired as it has been held that the recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations.

Regarding claim 15, Ferris as modified discloses the frame base including a front longitudinal member and a back longitudinal member that are parallel to each other and wherein a plurality of lateral members extend between and are attached to the front and back longitudinal members.

Regarding claim 17, Ferris as modified discloses groups of milk hoses, vacuum lines and control lines extending from each of the milking stations together to a longitudinal end of the milking parlor

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6. Claims 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ferris as modified as applied to claim 12 above, and further in view of van der Lely, US Patent 6,044,793.

Ferris as modified discloses the invention substantially as claimed including the structure containing all of the equipment needed for milking an animal. However, Ferris as modified does not disclose the milking station containing an automatic teat cup cluster detacher including a support arm for supporting a teat cup cluster. It would have been obvious to one having ordinary skill in the art to use an automatic teat cup cluster detacher with a support arm in conjunction with the milking parlor of Ferris as modified as it was known in the art at the time the invention was made to use an automated teat cup cluster as seen in van der Lely in conjunction with a milking parlor in order to milk a plurality of cows at one time.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S. Smith whose telephone number is 571-272-6909.

The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kimberly S Smith
Examiner
Art Unit 3644

kss

FRANK PALO
PRIMARY EXAMINER

Francis T. Palo
5/1/06